

FINAL MAY 17, 1999

CABLE SYSTEM FRANCHISE AGREEMENT

BETWEEN THE CITY OF DALY CITY,
AND RCN TELECOM SERVICES OF CALIFORNIA, INC.

TABLE OF CONTENTS

SECTION 1 GRANT OF FRANCHISE.....	2
SECTION 2 GENERAL REQUIREMENTS	3
SECTION 3 SERVICE AREA AND LINE EXTENSION POLICY.....	8
SECTION 4 SYSTEM UPGRADE	10
SECTION 5 SERVICES AND PROGRAMMING.....	11
SECTION 6 SUPPORT FOR PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG) CABLE ACCESS.....	12
SECTION 7 REGULATION.....	12

EXHIBITS

- A OWNERSHIP
- B SURETY GUARANTEE
- C GRANTEE COMMITMENT TO PUBLIC, EDUCATIONAL AND
GOVERNMENTAL (PEG) ACCESS FACILITIES AND EQUIPMENT

FIGURE 1 – LIST OF ELIGIBLE PUBLIC FACILITIES

**FIGURE 2 – LIST OF PUBLIC FACILITIES TO BE CONNECTED
INITIALLY**

AGREEMENT

This Agreement, made and entered into this 1st day of July, 1999, at Daly City, California, by and among the City of Daly City, a municipal corporation of the State of California and RCN Telecom Services of California Inc., a California corporation.

WITNESSETH

WHEREAS, the City of Daly City, pursuant to Federal and California law and Ordinance No. 1258, is authorized to grant one or more non-exclusive revocable Franchises to own, operate, construct, maintain and reconstruct a Cable System within the City; and

WHEREAS, the City, after due evaluation of RCN Telecom Services of California Inc. has determined that it is in the best interests of the City and its residents to issue a Franchise to RCN Telecom Services of California Inc.

NOW, THEREFORE, the City of Daly City (hereinafter the "Grantor") hereby grants to RCN Telecom Services of California Inc. (hereinafter collectively the "Grantee") a Cable System Franchise in accordance with the provisions of Ordinance No. 1258 and this Agreement.

SECTION 1 GRANT OF FRANCHISE

1.1 Grant

By this Agreement, Grantor grants the Franchise, authority, right and privilege, to construct, reconstruct, operate and maintain a Cable System within the Streets and Public Ways in the City as it is now or may in the future be constituted, and also provides the authority to offer to Customers (also known as Subscribers) any Cable Service or other services that legally may be offered, utilizing the facilities of Grantee's Cable System.

1.2 Right of Grantor to Issue and Renew Franchise

Grantee acknowledges and accepts the present right of Grantor to issue a Franchise and Grantee agrees it shall comply with all provisions contained herein and all mutually agreed to or otherwise lawful amendments to this Franchise.

1.3 Effective Date

The Franchise shall be effective on the date that all parties have executed this Agreement, provided that said date is no later than thirty (30) days after the effective date of the City Council resolution approving this Agreement. The Agreement is further contingent upon the filing by Grantee with the City Clerk, of the executed Franchise Agreement and the required security fund and insurance certificates, except that if the filing of the security fund or any such insurance certificate does not occur within sixty

(60) days after the effective date of the Resolution approving this franchise and any extension of time hereunder, the Grantor may declare this agreement null and void.

1.4 Duration

(a) The term of the franchise shall be 10 (ten) years from the effective date hereof, after which time it shall expire and be of no force and effect unless renewed. Renewal shall be in accordance with applicable law.

(b) The term in (a) above may be extended by Grantor for any additional period and for any reason. Any extensions shall be accomplished by resolution of the City Council. Said resolution shall spell out all terms and conditions of the extension, and shall be accepted in writing by Grantee.

1.5 Conflict with Cable Ordinance

(a) The provisions of the City of Daly City cable television regulatory ordinance, Ordinance No. 1258, are hereby incorporated herein by reference as if set out in full, and form part of the terms and conditions of this Agreement. In event of any conflict between the terms and conditions of this Agreement and the provisions of Ordinance No. 1258, this Agreement shall prevail.

(b) Should Ordinance No. 1258 be amended, revised, superseded or otherwise changed after the effective date hereof in such way as would materially affect the terms and conditions of this Agreement, said amendment, revision or change shall not apply to this Agreement without Grantee's approval; provided that, Grantor may amend at any time applicable customer service standards, pursuant to changes in applicable State and Federal law, and such amended standards shall apply to Grantee.

1.6 Definitions

The definitions contained in Ordinance No. 1258 are incorporated herein as if fully set forth.

SECTION 2 GENERAL REQUIREMENTS

2.1 Governing Requirements

Grantee shall comply with all lawful requirements of this Agreement, Ordinance No. 1258 and applicable Municipal, State and Federal laws. In addition, Grantee shall comply with all determinations or administrative directives by Grantor provided for in this agreement, and the current policies and procedures of the Department of Public Works. The Grantee shall obtain a City permit for all underground excavation, construction and/or installation. The Grantee shall provide a comprehensive construction and installation plan, prior to the approval of all necessary permits by Grantor.

2.2 Franchise Fee

(a) The Grantee shall pay to the Grantor an annual Franchise Fee of five percent (5%) of Gross Annual Cable Service Revenues received by the Grantee from all operations of the Cable System in the City of Daly City. If the FCC or an appropriate jurisdiction redefines, revises or broadens the definition of Cable Service(s), then Grantee shall include any such broader service revenues as part of its Gross Annual Revenues payments to the Grantor and the fee for revenues derived by the Grantee from such services shall be at the maximum rate permitted by law, beginning on the date the Grantor has such regulatory authority to collect payment on such services, provided, however, that any other cable television franchises operating in Daly City also include any such broader service revenues as part of such other cable television license's Gross Annual Revenues payments to the City.

(b) The Franchise Fee shall be payable monthly, no later than thirty (30) days after the end of the month for which payment is due.

(c) Revenues collected as Franchise Fees shall be included in Gross Annual Cable Service Revenues.

(d) For the purposes of this Agreement, revenues generated from the provision of digital video services and two-way interactive cable services (including the sale or lease of high speed data modems and internet access or service) shall be defined as Cable Service Revenues, provided that any other multi-channel video service providers which pay gross revenue fees to Grantor also include such revenues as part of their Gross Annual Revenues.

2.3 Payment to Grantor

(a) No acceptance of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provision of this Agreement. All amounts shall be subject to audit, as authorized by Section 5.40.400 of Ordinance No. 1258. Audits shall be limited to no more than one (1) for any three (3) year Franchise period.

(b) Upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent financial audit of Grantee's Gross Annual Revenue and Franchise Fee records, in accordance with Generally Acceptable Accounting Procedures (GAAP), and if such audit indicates a Franchise Fee underpayment of 3% or more where the Grantee has Gross Annual Revenues of at least \$100,000, the Grantee shall assume all reasonable, documented costs of such audit.

2.4 Insurance

(a) Upon the effective date of renewal the Grantee shall, at its sole expense, take out, and maintain during the life of this Agreement, a policy of insurance as required by the State of California for Workers' Compensation, and a policy of liability insurance that shall conform to the provisions of Section 5.40.560 of Ordinance No. 1258.

The amounts of insurance shall not be less than the following:

Single Limit Coverage applying to Bodily and Personal Injury and Property Damage:

Two Million Dollars (\$2,000,000)

The following endorsements shall be attached to the liability policy:

- (1) The policy shall cover on an "occurrence" basis.
 - (2) The policy shall cover Personal Injury as well as Bodily Injury.
 - (3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
 - (4) Broad form property damage liability shall be afforded.
 - (5) The Grantor shall be named additional insured on the policy.
 - (6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance effected by the Grantor will be called upon to contribute to a loss under this coverage.
 - (7) Standard form of cross-liability shall be afforded.
 - (8) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the Grantor.
- (b) Grantor reserves the right to adjust the limit coverage requirements no more often than every three (3) years. Any such adjustment by the Grantor will be no greater than the increase in the San Francisco Metropolitan Area Consumer Price Index (all consumers) for such three (3) year period.
- (c) Grantee shall submit to Grantor documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
- (d) Any deductible or self-insured retentions must be declared to and approved by Grantor. At the option of Grantor, insurer shall reduce or eliminate such deductible or self-insured retention as respects Grantor, its officers and employees or Grantee shall procure a bond guaranteeing payment of losses and related investigation, claims, administration and defense expenses.
- (e) Grantee hereby indemnifies Grantor for any damage resulting to it from failure of either Grantee or any subcontractor to take out and maintain such insurance.

2.5 Indemnification

(a) Grantee shall indemnify, hold harmless, release and defend Grantor, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including Grantee from any cause whatsoever arising from the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and save Grantor harmless from all matters relative to payment of Grantee's employees including compliance with Social Security, withholding, etc.

(b) This indemnification obligation is not limited in any way by a limitation on the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee.

(c) Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Section.

(d) This indemnification by Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the aforesaid operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(e) Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees (hereinafter "such acts"). Grantor shall hold Grantee harmless from any damage resulting from any acts of the Grantor or its officials, boards, commissions, agents or employees in utilizing any Governmental or Educational Access Channels, equipment, or facilities and for activating any local emergency alert facilities, and for any acts committed by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.

2.6 Security Fund

(a) In accordance with Section 5.40.410 of Ordinance No. 1258, within sixty (60) days of the Resolution adopting this Agreement, Grantee shall establish and provide to Grantor a security fund, as security for the faithful performance by Grantee of all material provisions of this Agreement in the amount of at least Fifty Thousand Dollars (\$50,000) and shall either be in the form of an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the Grantor as trustee for Grantee, with all interest distributed to the Grantee.

(b) The security fund shall be maintained at the Fifty Thousand Dollar (\$50,000) level throughout the term of this Agreement, provided that at intervals no more often than each three (3) years, Grantor shall have the right to require that this amount be increased

to reflect changes in the San Francisco Metropolitan Area Consumer Price Index during the prior three (3) year period.

(c) The security fund may be assessed by Grantor for those purposes specified in Section 5.40.410 of Ordinance No. 1258, in accordance with the procedures of Section 5.40.700 of said Ordinance, provided that Grantee has received written notice and thirty (30) days after receipt of notice to cure any material violations prior to any assessment. As long as the Grantor follows the procedures specified herein and in Ordinance No. 1258 for assessing and/or withdrawing funds from said security fund, Grantee shall not initiate litigation or non-City administrative action to prevent or impair Grantor from accessing those funds. Grantee's recourse, in the event Grantee believes any taking of security funds is improper, shall be through legal action after the security has been drawn upon. If the Grantor's action or taking is found to be improper by any court or agency of competent jurisdiction, Grantee shall be entitled to a refund of the funds plus interest and/or any other award which such court or agency shall make.

(d) Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's Rights-of-Way.

2.7 Procedure for Remediating Franchise Violations

(a) The procedure for remediating Franchise violations or breaches shall be consistent with the procedures of Ordinance No. 1258. Grantor, by action of the Grantor's City Manager, or a delegate, shall first notify Grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than fifteen (15) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Agreement or Ordinance No. 1258 and thirty (30) days in all other cases. If Grantee fails to correct the violation within the time prescribed, or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Grantee shall then be given written notice of not less than thirty (30) days of a public hearing to be held before the City Council. Said notice shall specify the violations alleged to have occurred.

(b) At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(c) In the event the Council finds that Grantee has corrected the violations or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage (if any), caused to the Grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.

(d) In the event the Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the Council may impose liquidated damages for all unexcused violations, assessable from the security fund, of up to Two Hundred Dollars

(\$200) per day for all violations, provided that all violations of a similar nature occurring at the same time shall be considered one (1) incident. Any violations of the Consumer Protection and Service Standards set forth in Article IV of the Ordinance No. 1258 shall be calculated on a per day basis, not per Customer.

If the Grantor elects to assess liquidated damages, pursuant to the provisions of this Franchise Agreement, then such election shall constitute Grantor's exclusive remedy for a period of sixty (60) days. Thereafter, if the Grantee remains in non-compliance with the requirements of the Franchise Agreement, the Grantor may pursue any available remedy.

2.8 Reservation of Rights

Grantor and Grantee reserve all rights that they may possess under the law unless expressly waived herein. By entering into this Agreement, neither Grantee nor Grantor waives any rights which it now or may later enjoy under applicable law, and specifically Grantor and Grantee reserve their rights to take full advantage of any changes in law during the term of the Franchise.

2.9 State or Federal Preemption

In the event that the State or Federal Government discontinues preemption in any area of Cable System regulation over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, Grantor may, if it so elects, adopt rules and regulations in these areas, to the extent permitted in the then applicable law. If such preemption has a material impact upon the term of this Agreement, Grantor and Grantee agree to negotiate in good faith to attempt to restore the mutual considerations provided in this Agreement.

SECTION 3 SERVICE AREA AND LINE EXTENSION POLICY

3.1 Franchise and Service Area

(a) No later than forty eight (48) months from the date of the first encroachment permit issued by Grantor to Grantee, Grantee shall construct, install, activate, operate and maintain, at its sole cost and expense, and make available to all residents of the City a Hybrid Fiber Coax HFC Subscriber Network designed for at least seven hundred fifty Megahertz (750 MHz), fully capable of carrying one hundred ten (110) NTSC video channels in the downstream direction and up to three (3) NTSC video channels in the upstream direction. The system shall also include two-way interactive residential services. All audio signals shall be provided to Subscribers in stereo, provided that such Signals are furnished to the Grantee in stereo.

(b) Grantee may activate portions of the plant and offer services in phases. Grantee shall provide the City with a construction schedule for each phased buildout area prior to construction of the area. Grantee shall complete each phase of construction of the system in accordance with the relevant construction schedule. Consistent with the construction

schedule, Grantee shall construct, install, activate, operate and maintain, at its sole cost and expense, and make available to the residents of the City a hybrid fiber coaxial (HFC) network. Completion of the system shall be defined as the ability to provide at least One Hundred Ten (110) Channels of video programming to all residential Customers within the City, as well as satisfactory completion of any permit-specified requirements and the public building connections provided in Section 4.2 below.

(c) The Grantee's Franchise and Service Areas shall be the entire City of Daly City, including any and all territory as may be annexed thereto, during the term of this Agreement. Grantor shall notify Grantee with thirty (30) days written notice whenever an area is annexed into the City of Daly City. The Grantee shall offer the full range of residential cable services to all residents of the City of Daly City, at standard installation and monthly charges; provided, that Grantee may offer discounts to select Customer groups, such as senior citizen and/or low income residents.

(d) If grantee makes cable service available to at least ninety five percent (95%) of Daly City residents within twenty four (24) months of the Execution Date of this agreement, one additional year shall be added to the franchise term provided in section 2.4 above. Grantor shall notify Grantee in writing of such extension.

(e) If grantee makes cable service available to at least ninety five percent (95%) of Daly City residents within thirty (30) months of the Execution Date of this agreement, one additional year shall be added to the franchise term provided in section 2.4 above. Grantor shall notify Grantee in writing of such extension.

(f) Grantor retains the right to grant a time extension on the system completion deadline imposed under section 3.1(a) above. Consideration for any extension shall take into account any documentation submitted by Grantee of hardships and other issues affecting construction which are beyond Grantee's control.

3.2 Commercial Areas

Grantee shall provide service to areas of the City that are primarily commercial whenever technically and economically feasible. Plant to such service areas will be constructed in conjunction with construction in adjacent residential areas.

3.3 Information on Construction Progress

(a) Grantee shall keep Grantor informed of construction activity throughout the build-out process. Grantee shall submit to Grantor comprehensive progress reports detailing construction activity. Reports shall include a list of completed project areas, specific locations of work in progress, information regarding barriers to timely construction and estimated timetables for completing future construction as follows:

- Within sixty days from the effective date of this agreement, Grantee shall provide Grantor with a description of the immediate planned construction and pre-construction activity and information on any issues which could affect construction, including the status of requests to occupy utility poles.
- After six months have elapsed from the effective date of this agreement and every six months thereafter until construction is completed, a progress report shall be submitted

describing any construction or pre-construction activity to date and issues affecting construction.

- The progress report due 12 months from the effective date of this agreement shall also include an estimated schedule for construction of facilities within Phase One.
- The progress report due 24 months from the effective date of this agreement shall also include an estimated schedule for construction of facilities within Phases One and Two and projections for construction activity within Phases Three and Four.
- The progress report due 36 months from the effective date of this agreement shall also include an estimated schedule for completion of the system.

(b) Any timetables or construction schedules submitted in satisfaction of the reporting requirements of section 3.3(a) shall be for information purposes only and shall not be binding on Grantee.

SECTION 4 MISCELLANEOUS PROVISIONS

4.1 Most Favored Nation

(a) Grantee shall make every reasonable effort to assure that Grantee's Cable System continues to reflect the general cable industry state-of-the-art throughout the term of the Franchise both in terms of number of program services as well as the types of services and features available. State-of-the-art shall mean that level of technical performance capacity, or service for which there is a reasonable market demand and which has been developed and demonstrated by existing cable television system operators and reputable equipment suppliers to be workable in the field and such that it would be economically feasible and viable in the franchise area at any given point in time throughout the term of this Franchise.

(1) After half of the franchise period has elapsed and should Grantor make a good faith determination that Grantee's system does not reflect the industry State-of-the-Art, Grantor and Grantee shall negotiate in good faith to develop a plan, including a timetable, for the purpose of offering new or improved service(s), taking into account the cost of providing such service(s)

(2) Nothing in this agreement shall limit the ability of the Grantor to extend the term of this franchise as provided in Sec. 1.4, in consideration for any extraordinary improvements to the system, or for any other reason.

4.2 Emergency Alert Capability

Upon completion of the System provided in Section 3.1 (b) of this Agreement, Grantee shall provide Emergency Alert System capability in full compliance with applicable Federal Communications Commission requirements.

4.3 Standby Power

Upon completion of the System provided in Section 3.1 (b) of this Agreement, Grantee shall provide standby power generating capacity at the Cable System (control center) providing at least twelve (12) hours of emergency supply. Grantee shall maintain standby power system supplies throughout the major trunk cable networks (nodes) capable of providing emergency power rated at three (3) hours within the standard limits of commercially available power supply units.

4.4 Parental Control Lock

Grantee shall provide, for sale or lease, to Customers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of premium Channels.

4.5 Status Monitoring

Grantee shall provide an automatic status monitoring system or a functional equivalent when the Cable System has been activated for interactive service provided that such status monitoring is technically and economically feasible to Grantee's satisfaction.

4.6 Technical Standards

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as amended from time to time, shall apply, to the extent permitted by applicable law.

4.7 Right of Inspection

Grantor shall have the right to inspect all construction, reconstruction or installation work performed subject to the provisions of the Franchise and other pertinent provisions of law, and as part of Grantor's obligation to protect the public health, safety and welfare of its citizens.

SECTION 5 SERVICES AND PROGRAMMING

5.1 Services and Programming

Grantee shall provide Grantor with a list of program services offered. Said list shall be updated each time a change is made. Grantee shall not reduce the number of program services without thirty (30) days prior written notification to the Grantor and System Customers, or as soon as feasible in cases where such reduction is not under Grantee's control.

5.2 Leased Channel Service

Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with applicable law.

SECTION 6 SUPPORT FOR PUBLIC EDUCATIONAL AND GOVERNMENTAL (PEG) CABLE ACCESS

6.1 Grantee Support for Public, Educational and Governmental (PEG) Access

Grantee shall provide the following support for PEG Access within the Franchise Area:

- (a) Provision and use of the grant funds and Channels designated in Exhibit "C" of this Agreement.
- (b) Maintenance of Grantee's PEG Access facilities and Channels, and support of PEG Access programming to the extent specified in Exhibit "C."
- (c) Connection of selected public buildings, as defined in Exhibit "C," to the closest node of Grantee's system. Said connections shall include free installation, basic cable service,

two-way interactive communications capability, high speed internet access and/or telephone service under terms and to locations detailed in Exhibit "C."

- (d) Grantor and Grantee agree that any use of the two-way interactive links by City agencies to generate revenue or to serve commercial entities shall occur only with the prior written consent of Grantee.

6.2 Compliance with Federal Law

In accepting this Franchise, the Grantee agrees that the commitments indicated in Section 6.1 above are voluntarily entered into and will not be charged against any Franchise Fees due the Grantor during the term of the Franchise. The Grantee also agrees to meet all of the commitments of Section 6.1 above, through the term of the Franchise

SECTION 7 REGULATION

7.1 Franchise Regulation

The Franchise renewed under this Agreement shall be subject to regulation by Grantor in accordance with all of the lawful provisions of Ordinance No. 1258.

7.2 Force Majeure

The force majeure provisions of Article XII of Ordinance No. 1258 shall apply.

7.3 Rate Regulation

If Grantor is permitted under Federal and/or State law, to regulate the rates charged by Grantee, and if Grantor elects to so regulate, Grantor shall establish reasonable procedures consistent with due process and applicable laws and regulations and follow those procedures while regulating.

7.4 Service Standards

A verified and continuing pattern of substantial noncompliance with the service standards contained in Ordinance No. 1258, this Agreement, or standards adopted and enforced by any regulatory body having the authority to formulate service standards for Cable Systems, shall constitute a material breach of this Agreement, entitling Grantor to utilize the provisions set forth in Section 5.40.720 of Ordinance No. 1258.

7.5 Removal and Abandonment

At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, the Grantor shall have the right to require Grantee to remove, at its own expense and to the extent feasible, all above-ground portions of the cable system from which all streets and public ways within the service area within a reasonable period of time, which shall not be less than one hundred and eighty (180) days.

7.6 Notices

Notices transmitted by either party to this Agreement to the other party shall be addressed as follows:

Grantor: Attn: City Manager
City of Daly City
330 90th Street
Daly City, CA 94015-1895

Grantee: RCN of California
1250 Bayhill Drive
Suite 200
San Bruno, CA 94066

ATTN: Paul Sigmund

Either party may designate by written notice a different address to which notices shall be sent

7.6 Successors and Assigns

All provisions of this Agreement shall apply to any lawful successors and assigns.

7.7 Severability

If any provision of this Agreement or the application of such provision to any circumstance is declared unconstitutional or otherwise invalid by the lawful judgment of any court of competent jurisdiction, the remainder of this Agreement or the application of the provision to other circumstances, shall not be affected thereby.

7.8 Choice of Law

This Agreement shall be governed by and interpreted under the State of California and Federal laws.

7.9 No Waiver

Grantee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the Grantor upon any one (1) or more occasions to insist upon or to seek compliance with any such terms or conditions. IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the date and year first above written.

APPROVED AS TO FORM: CITY OF DALY CITY

By: _____

Date:_____

(SEAL)

ATTEST:

City Clerk

RCN TELECOM SERVICES OF CALIFORNIA
INC.

By: _____

Name, Title

Date: _____

EXHIBIT A: OWNERSHIP

EXHIBIT B: SURETY GUARANTEE

WHEREAS, the City of Daly City (hereinafter called "Grantor") under this Franchise Agreement dated the ____ day of _____, 1999, has granted a Franchise to RCN Telecom Services of California Inc., (hereinafter collectively called "Grantee") a subsidiary of _____, (hereinafter called "Guarantor") to own, operate, and maintain a Cable System (hereinafter called "Franchise"); and

WHEREAS, Guarantor, has a substantial interest in said Franchise, the conduct of the Grantee, and the Franchise Agreement between Grantor and Grantee establishing Franchise requirements, which Agreement is hereby specifically referred to, incorporated herein and made a part hereof; and

WHEREAS, Section 2.6 of said Franchise Agreement requires the Grantee, as Principal, to furnish security issued to cover the faithful performance of certain of the Grantee's obligation under said Franchise, and which security shall be in favor of the Grantor;

NOW THEREFORE, subject to the provisions of Section 2.6, Guarantor hereby unconditionally guarantees the due and punctual performance of any and all obligations of Grantee contained in the Franchise Agreement, up to the financial limits provided in Section 2.6. This Guarantee shall, unless terminated, substituted or canceled as hereinafter provided, remain in full force and effect for the period provided by said Franchise. Provided that, upon substitution of another Guarantor reasonably satisfactory to the Grantor, this Guarantee may be terminated, substituted or canceled upon thirty (30) days prior written notice from Guarantor to the Grantor and Grantee.

Any such notice to be given hereunder shall be addressed to Grantor, with a copy to Grantee. Such terminations shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation. No claim, suit or action under this Guarantee by reason of any default of the Grantee shall be brought against Guarantor unless asserted or commenced no later than six (6) months after the effective date of such termination or cancellation of the Guarantee.

IN WITNESS WHEREOF, the Grantee and Guarantor have hereunto set these hands and seals this ____ day of _____, 1999.

GRANTEE:

GUARANTOR:

RCN TELECOM SERVICES OF
CALIFORNIA INC.

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT C: GRANTEE COMMITMENT TO PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS FACILITIES AND EQUIPMENT

1. DOWNSTREAM VIDEO PEG ACCESS CHANNELS

(a) Upon the effective date of the provision of cable service within the Franchise Area, Grantee shall make one (1) downstream video Channel available exclusively for Governmental and Educational (EG) Access use utilizing a two-way fiber connection between City Hall and Grantee's headend for the purposes of live cablecasting. The Channel shall be assigned cable channel 8. Grantee shall, within one hundred and twenty (120) days of Grantor's written request, relocate the two-way connection once, at no cost to Grantor, if the new location is within 125 feet of existing Cable System and close proximity to an active node. This Channel shall be dedicated for the term of the Franchise. Grantor shall establish rules and procedures for use of such channel.

(b) Upon completion of the Cable System provided in Section 3.1 (a), Grantor may request and Grantee shall provide, within six (6) months of the request, up to two (2) additional channels for PEG Access, including, for each channel, a modulator, and an upstream return path for program insertion from one (1) location listed in Figure 1 of this exhibit, if the new location is within 125 feet of existing Cable System and close proximity to an active node. The use of said channel shall be determined by Grantor.

2. BASIC CABLE SERVICE AND INTERACTIVE COMMUNICATIONS CAPABILITY TO PUBLIC BUILDINGS

(a) Grantee shall provide one (1) connection at the highest level of basic cable service, at no installation or monthly service charge, to any or all of the public owned and occupied locations listed in Figure 2 of this Exhibit, no later than the date cable services are first available to customers in the area in which the facility is located,

In addition, grantee shall provide the highest level of video cable services to one (1) location at City Hall, excluding pay-per-view services.

(b) Within 90 days of written request of Grantor but no earlier than the date cable services are first available to customers in the area a facility is located, Grantee shall provide one (1) cable connection and either the highest level of basic cable service or the highest speed regular residential cable internet service, 24 hours per day, 7 days a week (7 x 24), at no installation or monthly service charge, to any of the public owned and occupied buildings listed in Figure 1 of this Exhibit. Grantor or facility owner shall be responsible for acquisition of cable modem(s) required for internet service. Any new City or school owned and occupied building located within 125 feet of Grantee's System that may be erected during

the term of the Franchise may be added to Figure 1 by written notice from Grantor to Grantee.

3. PEG ACCESS FUNDING SUPPORT

(a) In addition to any other provisions of contained in this agreement, beginning three months after the effective date of this agreement, Grantee shall provide to Grantor a grant of forty cents (\$0.40) per month per Customer, to support Public, Educational and Governmental Access. The amount per month may be adjusted periodically throughout the term of the Franchise by Grantor, but shall not exceed seventy cents (\$0.70) per month. Any adjustments to the initial amount will take effect one hundred and twenty (120) days after written notification by Grantor to Grantee. The PEG Grant may be used for equipment and facilities for both one-way video PEG Access services and the construction, activation and equipment for an Institutional Network, at Grantor's sole discretion.

(c) Grantee agrees that any amounts paid under section 4a and b, above shall not be reflected on customer bills. This requirement shall be waived to the extent that other Daly City cable franchisees reflect such grant amounts on customer bills. All Grants shall be payable in addition to any other payments required of Grantee in this agreement and shall be remitted to Grantor quarterly.

4. PEG OPERATIONS

Grantor may negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions, or others to share operating expenses, as appropriate. Grantor and Grantee may negotiate an agreement for management of PEG facilities, if so desired by the parties.

5. TITLE TO PEG AND NETWORK EQUIPMENT

Grantor shall retain title to all PEG and/or network equipment and facilities procured with funding made available in accordance with above Section 3.

6. RELOCATION OF PEG CHANNELS

If Grantee relocates any PEG Access Channel to a different Channel number, Grantee shall reimburse Grantor for any out-of-pocket Grantor costs, not to exceed One Thousand Five Hundred Dollars (\$1,500.00) necessarily incurred as a result of the relocation. Grantee shall provide Grantor and all Customers with at least thirty (30) days written notice of such relocation.

7. PROMOTION OF PEG ACCESS

(a) The Grantee shall provide the Grantor access to third party providers to include PEG Access Channel listings in their print and electronic program guides provided by

Grantee to its customers. The Grantor shall be responsible for the timely updating of these listings. Any fees associated with special placement or handling, beyond the standard manner of presenting program schedule listings, shall be the responsibility of the Grantor.

(b) On an annual basis, upon sixty (60) days written notice, the Grantee shall allow the Grantor to submit a bill stuffer, created at the Grantor's expense, to be inserted into all Customer statements within the Grantor's Cable System. In consideration of regulatory notification requirements, the Grantee has final approval on the dates for insertion.